

**MODEL
AGREEMENT****Take Tough Stand When Aiding
Percentage Rent Tenants**

Restructuring the percentage rent obligations of a tenant that's having a hard time making ends meet may be preferable to recovering the space and seeking a replacement. But landlords who grant such concessions should insist on strict terms compensating them for the risks they're taking and ensuring them maximum protection in case the restructuring arrangement doesn't work out. Here's a Model Agreement that has proven effective for a Southern California attorney and his shopping center landlord clients. Speak to your own attorney about adapting the template to your particular business and circumstances.

TENANT ASSISTANCE AGREEMENT

THIS AGREEMENT is dated the ___ day of _____, 20__, between ABC CORPORATION, a corporation incorporated under the laws of _____ and having an office at _____ ("Landlord"), and XYZ CORPORATION, a corporation incorporated under the laws of _____ and having an office at _____ ("Tenant").

WHEREAS, by lease dated _____, 20__, and amended by agreements dated _____, 20__, and _____, 20__, (as so amended, the "Lease"), Landlord has leased to Tenant certain premises ("Premises") located in the City of _____ and the State of _____, for a term ("Term") commencing on the ___ day of _____, 20__, and ending on the ___ day of _____, 20__, upon the terms and conditions contained in the Lease; and WHEREAS, at Tenant's request, Landlord has agreed to temporarily forbear from exercising its remedies in respect of certain arrears accruing during the Relief Period (as that term is defined in Section 1 below).

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. **Relief Period:** Landlord agrees to forbear from the exercise of its remedies in respect of the Relief Arrears (as that term is defined in Section 2 below) during the period ("Relief Period") that commences on the ___ day of _____, 20__ (the "Effective Date") and ends on the date (the "Termination Date") which is the earlier of (a) ___ day of _____, 20__, and (b) the date of termination described in Section 5 below. Tenant acknowledges that despite Landlord's forbearance, the full amount of Minimum Rent continues to accrue and be due in accordance with the Lease.
2. **Relief Arrears:** The "Relief Arrears" shall be that part of the Minimum Rent payable under the Lease for the Relief Period which exceeds the sum of _____ Dollars (\$____) per annum (the "Annual Threshold") calculated in equal monthly installments of _____ Dollars (\$____) (the "Monthly Threshold").
3. **Interim Percentage Rent:** Throughout the Relief Period, the Percentage Rent payable under the Lease is the amount, if any, by which ___ percent (___%) of Gross Revenue during the Relief Period exceeds the Annual Threshold during the Relief Period (or a pro rata portion of the Annual Threshold if a Lease Year during the Relief Period is not twelve (12) months, or if there is any abatement of Minimum Rent during the Relief Period) and will be calculated, reported, and payable as required under the Lease. However, the monthly calculations and payments will be based on the Monthly Threshold. For the purpose of calculating Percentage Rent for the Relief Period, at Landlord's option, a new Lease Year will commence on the Effective Date and end on the expiration of the twelve (12) calendar months after the Effective Date or on the last day of the Relief Period. Tenant will forward to Landlord, in respect of Gross Revenue for the Relief Period, all statements required under the Lease at the times required under the Lease with regard to the new Lease Year.
4. **Additional Rent:** During the Relief Period all Additional Rent will continue to be payable in full as set out in the Lease without abatement, deferral, or set-off. (However, interest on Relief Arrears will not become due or payable until the Landlord demands payment of that interest in writing.)
5. **Termination of the Relief Period:**
 - (a) Landlord is entitled to terminate the Relief Period:
 - (i) Immediately upon written notice if:
 - (1) Tenant fails to pay the Minimum Rent (except Relief Arrears), Percentage Rent (calculated in accordance

with Section 3 above), or Additional Rent when required, or if Tenant defaults in the performance of any of its other obligations under this Agreement or the Lease;

- (2) Tenant or any officer, director, principal shareholder, employee, agent, associate, or affiliate of Tenant makes known any of the terms of this Agreement to any tenant of the Shopping Center or to any Person, it being acknowledged by Tenant that the terms of this Agreement are highly confidential;
 - (3) Tenant becomes bankrupt or insolvent or any of the other situations described in Section __ of the Lease occurs;
 - (4) the Lease is terminated or cancelled; or
 - (5) there is a Transfer of the Lease (as defined in Article __ of the Lease); or
- (ii) On thirty (30) days' written notice if Landlord wishes to terminate the Relief Period for any other reason.
- (b) If Landlord terminates the Relief Period in accordance with subsection 5(a)(i) above or Tenant is in default under the terms of the Lease on the Termination Date, Landlord shall be entitled to exercise all of its rights and remedies in respect of the Relief Arrears and interest accrued on the Relief Arrears under the Lease as though this Agreement had not been entered into. If Landlord terminates the Relief Period in accordance with subsection 5(a)(ii) above or the Relief Period expires in accordance with subsection 1(a) above, and Tenant is not in default under the terms of the Lease on the Termination Date, Landlord will be deemed to have waived its rights and remedies in respect of the Relief Arrears under the Lease. In the event of such waiver, the Lease will be deemed amended so that, in respect of the period after the Termination Date (the "Revised Minimum Rent Period"), Minimum Rent will be increased commencing on the first day after the Termination Date and ending on the __ day of _____, 20__, to the annual sum of ____ Dollars (\$____) payable in equal consecutive monthly installments of _____ Dollars (\$____) each in advance on the first day of each calendar month.
6. **Adjustment in Respect of Interim Percentage Rent:** Landlord shall not be required to adjust in favor of Tenant any amounts in respect of Percentage Rent paid by Tenant for the Relief Period even if those amounts exceed the amount that would have been payable as Percentage Rent had the calculation of Percentage Rent not been based on the Annual Threshold or the Monthly Threshold.
7. **Prohibition:** From and after the first day of the Relief Period until the end of the Relief Period (or, if this Agreement contains a Revised Minimum Rent Period, until the end of the Minimum Rent Period):
- (a) Neither Tenant nor any Person associated or affiliated with or related to Tenant shall (i) either directly or indirectly, lend money to, guarantee the debts or obligations of, invest money in or offer financial assistance to any Person, nor (ii) engage in or carry on business in, any retail business operation or store if it is not in existence on the Effective Date or if Tenant was not engaged in or carrying on business in the retail business operation or store on the Effective Date; and
 - (b) Tenant, if a corporation, shall not make any distributions or payments whatsoever (whether by way of dividends, bonuses, repayments of loans, or otherwise) to and will not (except for reasonable increases given in the usual course of business) increase the salaries or other remuneration of any of its shareholders, directors, or officers or any other Person not dealing at arm's length with Tenant.
8. **Lease to Remain in Effect:** Landlord and Tenant agree that, except as modified by this Agreement, the terms, covenants, and conditions of the Lease are hereby confirmed and will continue in full force and effect and that the capitalized terms used in this Agreement that are not herein defined have the same meaning as in the Lease.
9. **Landlord Option to Terminate:** Landlord shall have the right at any time during the Relief Period to terminate the Lease by giving Tenant sixty (60) days' prior written notice. In the event Landlord exercises its right to terminate, Tenant shall vacate and surrender possession of the Premises in accordance with the Lease on the date set out in Landlord's notice of termination. Tenant shall execute such other documents as may be required by Landlord to give effect to the provisions of this Section 9.
10. **Legal Costs:** Tenant shall pay to Landlord or Landlord's attorneys, on demand, as Additional Rent, all legal costs, disbursements, and other costs incurred by Landlord in connection with the preparation and implementation of this Agreement.
11. **Further Assurances:** Tenant shall, at its own expense, promptly execute such further documents and agreements with respect to this Agreement as Landlord reasonably requires from time to time.
12. **Successors and Assigns:** This Agreement shall inure to the benefit of Landlord and its successors and assigns but Tenant acknowledges that this Agreement and the concessions it contains are personal to Tenant and may not be transferred.
- IN WITNESS WHEREOF, the parties have duly executed this Agreement.

[Insert signature lines]